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EXAMINER

BOYCE, ANDRE D

| ART UNIT | PAPER NUMBER |
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3623

DATE MAILED: 06/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/883,590

Applicant(s)

FRENGUT, RENEE

Examiner

Andre Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 17 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. This Final Office action is in response to Applicant's amendment filed March 17, 2003. Claims 1, 8, 12, 19-21, 27, 29, and 30 have been amended. Claims 1-31 are pending.
2. The previously pending objections to the drawings have been withdrawn.  
The previously pending objection to the specification has been withdrawn.  
The previously pending rejection to claims 1, 8, 20, 29, and 30 under 35 USC § 112 have been withdrawn, however the rejection to claim 4 remains, as seen below.
3. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection, necessitated by Applicant's amendments to independent claims 1, 12, 19, 21 and 27

***Specification***

4. The amendment filed March 17, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The addition on page 10, line 12 "...all of whom are finally selected via a direct telephone

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call.”, the addition on page 11, line 18 “...commercials...”, and the addition on page 11, lines 20-22 “The responses are captured for analysis in a database and automatically e-mailed to the sponsoring client with participant identification, providing the client with immediate feedback of the participants’ responses.”

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation “the set of participants” in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim. The Examiner submits that “the set of participants” should be “a set of participants” in line 2 of the claim, since “participants” is first mentioned in claim 4, even though the basis for its definition may be found in claim 2.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4, 7, 11-13, and 16-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock (US 2002/0072955), in view of Davis (USPN 6,256,663).

As per claim 1, Brock discloses a programmed computer, a method for dynamically selecting a set of candidates over a distributed computer network for inclusion in a market research group (gathering demographic information, see page 8, ¶ 0085), comprising, the steps of: (a) acquiring market research data on potential candidates (standardized survey), the potential candidates connecting to the programmed computer across the distributed computer network; (b) evaluating the acquired market research data against a template (i.e., project parameters, see page 5, ¶ 0059); (c) selecting a set of candidates in response to the evaluating step (respondents designated for a particular focus group, see page 6, ¶ 0063), and the set of candidates being fewer than the set of potential candidates (all pre-existing respondents) being selected to fit the template in accordance with a predefined preference, and (d) permitting additional market research data from additional potential candidates (creating a new respondent 90, see page 6, ¶ 0063) to be acquired across the distributed computer network. Brock does not explicitly disclose (e) repeating steps (b) through (d), so that the permitting step acquires market research data until a time certain, the evaluating step evaluates the market research data at one or more given times which occur before the time certain, and the

selecting step dynamically selects the set of candidates so as to fit the predefined preference at each given time and optimally fit the predefined preference at the time certain. Davis discloses that once a suitable number of pre-qualified potential respondents (i.e., set of candidates that fit a predefined preference at one or more given times, see column 5, lines 8-10) are identified, further qualification done via a screening survey based upon specifications established by the client, wherein successfully screened, pre-qualified potential respondents are invited to participate (i.e., optimally fit the predefined preference at a time certain, the start of the focus group, see column 5, lines 15-20). Both Brock and Davis are concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include repeating the steps so that the permitting step acquires market research data until a time certain, the evaluating step evaluates the market research data at one or more given times which occur before the time certain, and the selecting step dynamically selects the set of candidates so as to fit the predefined preference at each given time and optimally fit the predefined preference at the time certain in the Brock method, as seen in Davis, as an effective means of qualifying potential respondents that meet the client specifications.

As per claim 2, Brock discloses the additional step of providing a set of candidates with an audio/video capture mechanism that is connectable to a machine that permits two-way communication across the distributed computer network, the

set of candidates comprising a first portion of the set of potential candidates (see page 10, ¶ 0105).

As per claim 3, Brock discloses an image of the potential candidate (respondent, see page 10, ¶ 0105).

As per claim 4, Brock discloses the additional step of conducting a market research study over the distributed computer network with the set of participants, the set of participants comprising a first portion of a set of candidates (focus group, see page 6, ¶ 0064).

As per claim 7, Brock discloses the additional conducting step of displaying a stimulus (web page) to the participants across the distributed computer network and, receiving participant response (rating of web page) to the stimulus across the distributed computer network (see page 6, ¶ 0066).

As per claims 11 and 31, Brock discloses the additional step of disseminating information between the set of candidates and a client at the given time (real-time or at a later time in the form of a report, see page 5, ¶ 0056).

As per claim 12, Brock discloses method for conducting a market research study from a host machine over a distributed computer network (see Figure 25), comprising, the steps of: selecting a set of candidates to participate in a market research study, the set of candidates being fewer than all candidates (i.e., respondents for a particular focus group, see ¶ 0062), inviting the set of candidates (respondents) to the market research study conducted during a predetermined time interval and conducted over a distributed computer network (internet 20), wherein

the candidates (respondents) access the host using a respective user machine interface having an audio/video captive mechanism connected thereto (see page 10, ¶ 0105); initiating audio/video communication between the host (moderator) and the user machines (computers 10") with at least a set of participants comprising a first portion of a set of candidates, during the predetermined time interval in substantially real time; exhibiting a stimulus to the participants; and accumulating (collecting) participant responses to the stimulus over the distributed network at the host (see page 10, ¶ 0106). Brock does not explicitly disclose the set of candidates being selected so as to fit a predefined preference of a template at each of one or more given times and being selected so as to optimally fit the predefined preference at a time certain which occurs after the given times. Davis discloses pre-qualified potential respondents (i.e., set of candidates that fit a predefined preference at one or more given times, see column 5, lines 8-10) further qualified via a screening survey based upon specifications established by the client, wherein successfully screened, pre-qualified potential respondents are invited to participate (i.e., optimally fit the predefined preference at a time certain, the start of the focus group, see column 5, lines 15-20). Both Brock and Davis are concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the set of candidates being selected so as to fit a predefined preference of a template at each of one or more given times and being selected so as to optimally fit the predefined preference at a time certain which occurs after the given times in



Brock, as seen in Davis, as an effective means of qualifying potential respondents that meet the clients specifications.

As per claim 13, Brock discloses the comparing step performed throughout the market research study to verify participant presence (respondents forced to provide comments as condition of progressing, see page 7, ¶ 0078).

As per claim 16, Brock discloses the additional step of selecting groups of participants for a predetermined stimulus, wherein the predetermined stimulus is unique to the participant group (focus group, see page 6, ¶ 0064).

As per claim 17, Brock discloses the additional step of dynamically selecting a particular stimulus in response to prior participant responses (survey of various attributes of web site to be studied, see page 8, ¶ 0085).

As per claim 18, Brock discloses the additional step of tabulating (compiling) results of the market research study (see page 10, ¶ 0106).

Claims 19-20 are rejected based upon the rejection of claim 1, since they are the system claims corresponding to the method claim.

Claim 21 is rejected based upon the rejection to claim 12, since it is the system claim corresponding to the method claim.

As per claim 22, Brock discloses a sponsoring client device having distributed computer network access wherein a sponsoring client accessing the market research study at a given time observes the submitted moderator stimuli and the submitted user responses (see page 8, ¶ 0082).

As per claims 23-26, Brock discloses a user (respondent) working from the user device (computers 10") observes a moderator working from a moderating device (computer 12"), the submitted moderator stimuli, and the submitted user response, a self-image, a set of participant images, and a set of submitted participant responses (see page 10, ¶ 0105).

As per claim 27, Brock discloses a programmed computer, a method for dynamically modifying a template used to select a set of candidates over a distributed computer network for inclusion in a market research group (gather demographic information, see page 8, ¶ 0085), the steps of: (a) acquiring template data concerning potential candidates (standardized survey); (b) modifying the template using the acquired template data (evaluation by respondents 356); (c) evaluating the potential candidates against the modified template (i.e., project parameters, see page 5, ¶ 0059); and (d) selecting a set of candidates in response to the evaluating step, the set of candidates being fewer than the set of potential candidates and being selected to fit the modified template (respondents designated for a particular focus group, see page 6, ¶ 0063). Brock does not explicitly disclose (e) repeating steps (a)-(d) such that the selecting step dynamically selects the set of candidates that fit the template at one or more given times in accordance with a predefined preference stored in a template and which at a time certain, which occurs after the one or more given times selects users in accordance with a best fit of the predefined preference to ensure an optimal set of candidates. Davis discloses that once a suitable number of pre-qualified potential respondents (i.e., set of candidates

that fit a predefined preference at one or more given times, see column 5, lines 8-10) are identified, based upon client established qualifications, further qualification done via a screening survey based upon specifications established by the client, wherein successfully screened, pre-qualified potential respondents are invited to participate (i.e., optimally fit the predefined preference at a time certain, the start of the focus group, see column 5, lines 15-20). Both Brock and Davis are concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include repeating the steps so that the permitting step acquires market research data until a time certain, the evaluating step evaluates the market research data at one or more given times which occur before the time certain, and the selecting step dynamically selects the set of candidates so as to fit the predefined preference at each given time and optimally fit the predefined preference at the time certain in the Brock method, as seen in Davis, as an effective means of qualifying potential respondents that meet the client specifications.

As per claim 28, Brock discloses the potential candidates received from a data store (database 30) memory and used in the evaluating step (window 88, see page 6, ¶ 0063).

As per claims 29-30, Brock does not disclose the potential candidates received over the distributed computer network until the time certain and used in the evaluating step. Davis discloses identifying a suitable number of pre-qualified potential respondents (i.e., set of candidates that fit a predefined preference at one

or more given times, see column 5, lines 8-10) based upon client established qualifications, further qualification done via a screening survey based upon specifications established by the client, wherein successfully screened, pre-qualified potential respondents are invited to participate (i.e., optimally fit the predefined preference at a time certain, the start of the focus group, see column 5, lines 15-20). Both Brock and Davis are concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include repeating the steps so that the permitting step acquires market research data until a time certain, the evaluating step evaluates the market research data at one or more given times which occur before the time certain, and the selecting step dynamically selects the set of candidates so as to fit the predefined preference at each given time and optimally fit the predefined preference at the time certain in the Brock method, as seen in Davis, as an effective means of qualifying potential respondents that meet the client specifications.

9. Claims 5, 6, 8, 9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock (US 2002/0072955), in view of Thomas (US 2002/0002482).

As per claims 5, 9, and 14, Brock does not disclose the additional steps of: paying each participant a first sum for participating in the market research study; and, paying a non-overlapping remainder portion of the set of candidates a second

sum which is less than the first sum. Thomas discloses incentives for participants, including money (see page 2, ¶ 0029). Both Brock and Thomas are concerned with the effective collection of electronic information, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include paying each participant a first sum for participating in the market research study; and, paying a non-overlapping remainder portion of the set of candidates a second sum which is less than the first sum in Brock to provide an incentive for respondents, thus making the method more effective.

As per claim 6, Brock discloses the additional steps of: acquiring an image of each participant during the course of the conducted market research study (see page 10, ¶ 0105). Brock does not disclose comparing each participant image to the potential candidate image acquired with the market research data, wherein the step of paying each participant comprises paying each participant for which the comparing step results in a match. However, Brock discloses each respondent having a specified ID set up by the moderator (see page 6, ¶ 0064), and Thomas discloses incentives for participants, including money (see page 2, ¶ 0029). Both Brock and Thomas are concerned with the effective collection of electronic information, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include comparing each participant image to the potential candidate image, wherein the step of paying each participant comprises paying each participant for which the comparing step results in a match, in the Brock method as an alternate means of verifying the identity of the

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respondent, and providing an incentive for the respondent, thus making the method more effective.

As per claim 8, Brock discloses the comparing step performed throughout the market research study to verify participant presence (respondents forced to provide comments as condition of progressing, see page 7, ¶ 0078).

10. Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock (US 2002/0072955), in view of Thomas (US 2002/0002482) as applied to claim 7 above, in further view of Levine (USPN 6,385,590).

As per claims 10 and 15, Brock does not disclose the additional step of officiating a follow-up interview with a participant, wherein the moderator displays additional stimulus and receives additional participant response in response to the additional stimulus. Levine discloses at least one participant presented with additional stimuli to test for a delayed impact (see column 7, lines 45-51, 60-62). Both Brock and Levine are concerned with the effect of various stimuli on respondents, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a follow-up interview with a participant in Brock, as seen in Levine, to collect additional respondent information, thus making the system more effective through further data compilation and analysis.

***Response to Arguments***

11. In Remarks, Applicant argues that neither Brock nor Thomas disclose the evaluation of candidates via a temporal component. The Examiner submits that Davis discloses evaluation of potential respondents via a multi-step process completed up until the beginning of the focus group (i.e., time certain).

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Smith, Jr. et al (US 2002/0128898) discloses assigning a survey to a respondent.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing


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date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and After Final communications, and (703) 746-7305 for informal/draft communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
adb  
June 4, 2003

  
**TARIQ R. HAFIZ**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**